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IN THE

Supreme Court of the United States

OFFICE OF THE COMMISSIONER OF BASEBALL;
THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS;
THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,

Petitioners,

—v.—

THE MAJOR LEAGUE UMPIRES ASSOCIATION;
WORLD UMPIRES ASSOCIATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a court that sits in review of an arbitration award properly may find grounds to enforce that award by rejecting the arbitrator's interpretation of the parties' collective bargaining agreement and instead substituting its own *de novo* interpretation of the agreement.

2. Whether a reviewing court may enforce an arbitration award that, according to the arbitrator's own explication of his reasoning, is predicated on the creation of an entirely new contractual right.

LIST OF PARTIES

The parties who appeared in the United States Court of Appeals for the Third Circuit are listed in the caption.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

The following publicly-traded companies indirectly own, through subsidiaries, partnership interests, or a combination thereof, an interest of 10% or more in a Major League Baseball Club:

Adolph Coors Company

American Financial Corp

AOL Time Warner Inc.

Gannett Co., Inc.

Nintendo Company Ltd.

Rogers Communications, Inc.

Rogers Telecommunications Ltd.

Tribune Company

An indirect subsidiary of the News Corporation Limited ("News Corp.") has applied to acquire a more than 10% interest in the Colorado Rockies. Additionally, a subsidiary of News Corp. holds a promissory note, the maker of which is an indirect owner of the Los Angeles Dodgers ("Dodger Parent"), which promissory note is convertible into non-voting preferred membership interests in Dodger Parent which under certain circumstances could represent more than 10% of the Dodgers.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 357 F.3d 272 (3d Cir. 2004). (Pet. App. at 1-4a). The Third Circuit affirmed (Becker, J., dissenting) the December 13, 2001 decision of the United States District Court for the Eastern District of Pennsylvania, which is unreported. (Pet. App. at 37a). The Third Circuit's denials of the parties' petitions for rehearing with suggestion for rehearing en banc, dated June 2, 2004, are also unreported. (Pet. App. at 59a).

STATEMENT OF JURISDICTION

The Court of Appeals' judgment was entered on February 17, 2004. (Pet. App. at 1-4a). Petitions for rehearing with suggestion for rehearing en banc submitted by both parties were denied on June 2, 2004. (Pet. App. at 59a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

§ 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185.

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts per-

formed were actually authorized or subsequently ratified shall not be controlling.

STATEMENT OF THE CASE

This action arose out of the mass resignation in July 1999 of umpires employed by the American League of Professional Baseball Clubs (the "American League") and the National League of Professional Baseball Clubs (the "National League"), and the failed attempt of 22 of those umpires to withdraw their resignations.

On August 27, 1999, the Major League Umpires Association (the "MLUA" or the "Union") filed a Demand for Arbitration pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association seeking the reinstatement of the 22 umpires who lost their jobs as a result of the mass resignation scheme. The Demand stated that the issue in dispute was the termination by the employer of these 22 umpires in violation of the parties' collective bargaining agreement (the "Agreement" or "CBA"). The parties selected Alan A. Symonette as the arbitrator (the "Arbitrator.")

The one and only provision of the Agreement that addresses the issue of umpire terminations is Article VIII. That provision states in pertinent part:

> ARTICLE VIII. STAFF, TENURE, TERMINATION, ETC.
>
> A. Tenure
>
> In the event an umpire with five or more years of service is discharged by a League President, the umpire and the representative of the Association shall be entitled to an explanation of the reasons for

his discharge and the umpire shall be entitled at his request to a hearing before the League President at which time the discharge shall be subject to full review and re-examination by the League President. The decision of the League President after such hearing shall be final and binding.

All umpires shall be selected or retained in the discretion of the League Presidents on the basis of merit and the skill of the umpire to perform to Major League standards. With respect to all such members of the regular staff, there shall be no discrimination or recrimination on the part of any party to this Agreement.

B. Umpiring Staff

The size of the regular umpiring staff of each League shall be determined from time to time by the League President at his discretion, provided that during the term of this Agreement the League staffs shall not be less than thirty-two (32) umpires. In the event either League expands by two clubs during the term of this Agreement, the expanding League's staff shall be increased to not less than thirty-six (36) umpires.

(Pet. App. at 81-82a).

In November 1999, the American and National Leagues moved that the Arbitrator dismiss the grievance on the ground that the dispute was not substantively arbitrable because there was no agreement to submit the subject matter of the dispute to arbitration. In a Ruling dated November 26, 1999, the Arbitrator denied the motion to dismiss. (Pet. App. at 173a).

Following 17 days of hearings, on May 11, 2001, the Arbitrator issued an Opinion and Award that sustained

the grievances and ordered the reinstatement of seven National League umpires (Gary Darling, Bill Hohn, Terry Tata, Frank Pulli, Larry Poncino, Joseph West, and Larry Vanover) and two American League umpires (Drew Coble and Greg Kosc), and denied the grievances of 13 other American and National League umpires (Bob Davidson, Eric Gregg, Thomas Hallion, Rich Garcia, Jim Evans, Robert Dale Ford, Mark Johnson, Ken Kaiser, Larry McCoy, Ed Hickox, Paul Nauert, Bruce Dreckman, and Sam Holbrook). (Pet App. at 166-69a).

On June 6, 2001, the Union filed a complaint in the United States District Court for the Eastern District of Pennsylvania (Bartle, J.) seeking to vacate those portions of the Award denying its grievance. On June 8, 2001, the American and National Leagues, together with the Office of the Commissioner of Baseball (collectively referred to hereinafter as the "Leagues"), filed a complaint in the same Court seeking to vacate those portions of the Award sustaining the MLUA's grievance. The District Court properly had jurisdiction over the actions pursuant to section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. On July 18, 2001, the actions were consolidated.

The Leagues and the MLUA thereafter moved for summary judgment on their respective complaints. By Memorandum and Order dated and filed December 13, 2001, the District Court denied the Leagues' motion for summary judgment, granted in part the MLUA's motion for summary judgment, and enforced the Award as to those umpires whose grievances had been sustained. (Pet App. at 35-36a). The District Court also granted the MLUA's motion for summary judgment in part and vacated the Award as to Nauert, Dreckman, and Holbrook, and remanded their grievances for further proceedings before a different arbitrator. (Pet. App. at 36a).

Finally, the MLUA's motion to vacate the portion of the Award denying the grievances of certain umpires was denied. (Pet. App. at 35-36a).

Both parties appealed the confirmation of the portions of the Award unfavorable to them.[1] The Third Circuit had jurisdiction over the parties' cross-appeals of the District Court's final order pursuant to 28 U.S.C. § 1291. On February 17, 2004, the Third Circuit issued an Opinion affirming the judgment of the District Court, with then-Chief Judge Becker dissenting. (Pet. App. at 4a, 33-34a). On June 2, 2004, the Third Circuit denied the Leagues' and the MLUA's petitions for rehearing with suggestion for rehearing en banc. (Pet. App. at 59a).

REASONS FOR GRANTING THE PETITION

The Leagues respectfully request that this Court grant the petition, and either summarily reverse or set this case for briefing and argument. To begin with, the Third Circuit's decision manifests a stark abandonment of the principles governing judicial review of arbitration awards that this Court first established in *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960), namely that a reviewing court may not substitute its own *de novo* interpretation of the parties' collective bargaining agreement for the interpretation adopted by the arbitrator. In particular, as then-Chief Judge Becker recognized in his dissent below, the Arbitrator's own interpretation of the parties' contract compelled the conclusion that there was no agreement to arbitrate this dispute. Instead of according the A*rbitrator's* interpretation of the Agreement the def-

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[1] The parties settled the dispute with respect to the claims of Nauert, Dreckman, and Holbrook while the appeal to the Third Circuit was pending. (Pet. App. at 11-12a, n.7).

erence due under *Enterprise Wheel & Car Corporation*, the majority of the Panel adopted an interpretation of the contract that had been expressly rejected by the Arbitrator.

Accordingly, Supreme Court review is necessary to clarify the correct standard of review courts must employ when evaluating the enforceability of arbitration awards. This clearly is an important issue that arises every time a party seeks either to vacate or confirm a labor arbitration award.

In addition, Supreme Court review is necessary because this aspect of the Third Circuit's decision brings it squarely into conflict with decisions of the First, Second, Eighth, and Eleventh Circuit Courts of Appeals, each of which has held—based on established Supreme Court precedent—that a reviewing court may not impute rationality to an arbitration award by substituting its own *de novo* interpretation for that of the arbitrator.

Finally, Supreme Court review also is necessary because the Third Circuit's decision enforcing the portion of the arbitration award requiring the reinstatement of certain umpires expressly approved of the Arbitrator's decision to create a new right that is contrary to the language of the Agreement as interpreted by the Arbitrator. The Third Circuit's decision, therefore, directly conflicts with the rule of arbitral authority under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, followed by the overwhelming majority of circuits, that grievance arbitrators are limited by the language of the contract and may not dispense their own version of industrial justice.

I. THE THIRD CIRCUIT'S DECISION REGARDING THE STANDARD OF REVIEW OF LABOR ARBITRATION AWARDS CONFLICTS WITH DECISIONS OF THIS COURT AND CREATES A SPLIT WITH A NUMBER OF OTHER CIRCUITS.

A. The Third Circuit's Improper Substitution Of Its Own *De Novo* Interpretation Of The Agreement For That Of The Arbitrator Is Contrary To Supreme Court Precedent.

In the three Supreme Court cases referred to as the *Steelworkers Trilogy*, *see United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960), this Court made abundantly clear that when the parties to a collective bargaining agreement have chosen an arbitrator to resolve their contractual disputes, it is the arbitrator's interpretation of the collective bargaining agreement—not the reviewing court's—to which the parties are entitled. *See American Manufacturing Co.*, 363 U.S. at 567-68; *Warrior & Gulf Navigation Co.*, 363 U.S. at 585; *Enterprise Wheel & Car Corp.*, 363 U.S. at 599. *See also Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 510 (2001).

Accordingly, the role of the reviewing court is limited to determining whether the arbitrator's decision as stated "draws its essence from the collective bargaining agreement." *Enterprise Wheel & Car Corp.*, 363 U.S. at 597. *See also id.* at 599 (reviewing courts "have no business overruling [an arbitrator] because their interpretation of the contract is different from his").

In application, according to this Court, this test requires that the reviewing court look to see whether "the *arbitrator's words* manifest an infidelity to" the collective bargaining agreement. *Id.* at 597 (emphasis added). Where that is so, "courts have no choice but to refuse enforcement of the award." *Id.* In making this determination, the reviewing court's obligation is to look only to the arbitrator's expressed interpretation of the agreement and determine whether the arbitration award was rationally derived from that interpretation. *See id.* Accordingly, the reviewing court has no authority to engage in a *de novo* interpretation of the collective bargaining agreement and substitute that interpretation for the arbitrator's own words in an effort to impute rationality to an otherwise unenforceable arbitration award. *See id.* at 599.

A contrary standard of review—one where reviewing courts have a roving commission to find a contract interpretation that possibly can support an award—not only substitutes the court's interpretation for that of the parties' selected decision-maker, but it mandates that reviewing courts become inextricably intertwined with the interpretation of collective bargaining agreements. This is precisely the result that this Court warned against in *Enterprise Wheel & Car Corp.*, 363 U.S. at 599. *See also Garvey*, 532 U.S. at 510 (a reviewing court's "own judgment of the appropriate result . . . improperly substitute[s] a judicial determination for the arbitrator's decision that the parties bargained for") (citations omitted); *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987) ("[b]ecause the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept.")

The Third Circuit did not adhere to the "draws its essence" test as established in *Enterprise Wheel & Car Corp.*, 363 U.S. at 597, and instead improperly substituted its own *de novo* interpretation of the parties' Agreement. The court then relied upon this de novo interpretation as the grounds for enforcing the award.[2]

Specifically, the Arbitrator concluded in his Opinion and Award that the umpires in question had resigned their employment—a conclusion that was not disturbed by the District Court or the Third Circuit below. In light of that conclusion, the Arbitrator determined—based on *his* interpretation of the Agreement—that "any action taken by the League President would not be subject to the limitations set forth in the collective bargaining agreement." (Pet. App. at 139a). Accordingly, based on the Arbitrator's own interpretation of the Agreement, "there was no violation either of the basic [collective bargaining] agreement or of the first paragraph of Article VIII A that could trigger the arbitration clause." (Pet. App. at 33a) (Becker, J., dissenting).

Moreover, even if the Arbitrator's specific conclusion concerning the umpires' resignation and its significance on the issue of arbitrability were ignored, the dispute—again according to the Arbitrator's own interpretation of the Agreement—still would not be arbitrable because Article VIII.A required resolution of the dispute through a separate and distinct dispute resolution procedure that ended in a "final and binding" decision by the League

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[2] We are of course cognizant of the general reluctance among the federal courts to interfere with an arbitration award merely on the grounds that it is "ambiguous." *Enterprise Wheel & Car Corp.*, 363 U.S. at 597. However, that is not this case. Here, the Arbitrator, in a 100-page opinion, clearly and unambiguously set forth his interpretation of the contract and the extra-contractual basis for his award. (Pet. App. at 168-69a).

Presidents. (Pet. App. at 81-82a). On this particular point, the Arbitrator's explication of his rationale could not have been clearer. According to the Arbitrator, the League Presidential hearing procedure in Article VIII.A (not the catch-all arbitration provision in Article XV.A) is the sole and exclusive remedy available to umpires for alleged violations of Article VIII.A.[3] (Pet. App. at 157a)

The majority of the Panel attributed an entirely different, *de novo* interpretation to the Agreement: (i) that the two paragraphs of Article VIII.A are totally separate and distinct; (ii) that the instant dispute actually arose under the second paragraph of Article VIII.A and not the first paragraph; *and* (iii) that disputes concerning the second paragraph are subject to arbitration under Article XV.A (the agreement's catch-all arbitration provision) and not the dispute resolution procedure in the first paragraph of Article VIII.A. (Pet. App. at 19-22a).

Leaving to one side the merit of this construction of the Agreement under prior Third Circuit precedent,[4] the problem with imputing this interpretation to the arbitration award is that it was explicitly rejected by the Arbitrator.[5] Specifically, the Arbitrator interpreted the

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[3] Notwithstanding these determinations, the Arbitrator nevertheless treated this dispute as arbitrable before him because he determined that *he* was the one who sat in review of the League President's "final and binding" decisions and that a Presidential hearing (as provided for in Article VIII) was not necessary in the case at all.

[4] *See, e.g., Trap Rock Indus., Inc. v. Local 825, Int'l Union of Operating Eng'rs*, 982 F.2d 884, 889 (3d Cir. 1992) (interpreting an arbitration provision in a manner that frustrates an express right of the employer deprives the agreement of its "logical coherence").

[5] The District Court likewise apparently recognized that the Arbitrator's initial determination of arbitrability could not be reconciled with the Arbitrator's own interpretation of the Agreement in the final Opinion and Award and, therefore, advanced a different

two paragraphs of Article VIII.A not as creating separate and distinct rights, but rather as one integrated right. Moreover, the Arbitrator held that disputes over this one right are resolvable by the League Presidents and not arbitration. (Pet. App. at 172a).

The Arbitrator expressly reiterated this interpretation of Article VIII.A in the context of the grievances of the umpires with less than five years of seniority:

> The first sentence of the provision clearly states that the limitations on the President with respect to tenure only apply to umpires with 5 or more years of seniority. . . . Under the terms of the agreement under which this Arbitrator is bound, the tenure of these three individuals was subject to the unfettered discretion of the League President. Therefore . . . . these three umpires are not eligible for the limited protections of Article VIII-A of the agreement. (Pet. App. at 161-62a).

Thus, according to the Arbitrator, because these three umpires had not satisfied the eligibility requirements of the *first* paragraph of Article VIII.A, they were not entitled to any of the protections in the *second* paragraph.[6]

The Arbitrator's opinion, therefore, cannot be reconciled with the majority's interpretation that the types of alleged violations at issue "did not fall under the limited

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interpretation following its *de novo* review. In particular, the District Court interpreted the Agreement as offering the umpires the choice between the Presidential hearing in Article VIII.A or third-party arbitration. This interpretation of the Agreement similarly had already been rejected by the Arbitrator. (Pet. App. at 157a).

[6] Indeed, the majority of the Panel actually recognized that the Arbitrator concluded that "[b]ecause the Nauert Group failed to qualify for this protection in the first place, the members of that group could essentially be fired at will." (Pet. App. at 32a)

review provisions of the first paragraph of Article VIII A" and therefore "[b]y default, then they would fall within the broad scope of the general dispute resolution mechanism contained in Article XV." (Pet. App. at 20a)

If the Third Circuit had applied the "draws its essence" test as explained in *Enterprise Wheel & Car Corp.*, 363 U.S. at 597, the Court of Appeals would have been obligated to vacate the award on the issue of substantive arbitrability because "the arbitrator's words manifest an infidelity" to the collective bargaining agreement. *Id.* Those "words" compel the conclusion that either, as the dissent concluded, "[t]here was no violation of the basic agreement . . . that could trigger the arbitration clause" (Pet. App. at 33) (Becker, J., dissenting), or, alternatively, the alleged violation was resolvable only pursuant to the dispute resolution procedure in Article VIII.A. There is no "other" alternative that could have given rise to an arbitrable dispute without rejecting the Arbitrator's expressly stated interpretation of the contract. But this is precisely what the court below did.

The standard of review adopted by the Court of Appeals thus is a standard that requires rejecting what the arbitrator says in order to enforce a conclusion that the court nevertheless believes is "correct." This is the very antithesis of this Court's "draws its essence" test because it makes the reviewing court—and not the arbitrator—the final interpreter of the parties' collective bargaining agreement. *Enterprise Wheel & Car Corp.*, 363 U.S. at 597; *see also Misco*, 484 U.S. at 37-38.

B. The Third Circuit's Standard For Reviewing A Labor Arbitration Award Creates A Split Within The Circuits Requiring Supreme Court Review.

Because the decision below represents a fundamental departure from the "draws its essence" test as explicated by this Court, it is hardly surprising that the decision creates disharmony among the Circuits. This conflict in the Courts of Appeals is particularly deleterious in this context, not only because the issue arises repeatedly, but also because the Court, almost a half-century ago, recognized the need for a uniform body of federal labor law where, as here, the court exercises jurisdiction under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457 (1957). *See also United Steelworkers of America v. Rawson*, 495 U.S. 362, 375 (1990); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210-11 (1985).

The Courts of Appeals in the First, Second, Eighth, and Eleventh Circuits have interpreted the "draws its essence" standard of review to mean that an arbitration award may not be enforced where, as here, the arbitrator's stated interpretation of the agreement cannot be reconciled with the arbitrator's ultimate award. These Circuits, in contrast to the courts below, do not attempt to impute rationality to an arbitrator's award by substituting the reviewing court's *de novo* interpretation of the contract for that of the arbitrator.

For example, in *Georgia-Pacific Corporation v. Local 27, United Paperworkers International Union*, 864 F.2d 940 (1st Cir. 1988), the arbitrator determined that the grievant's conduct rose to the level of "dishonesty" within the meaning of the collective bargaining agreement. *Id.* at 945. This arbitral determination gave the employer the right to impose the penalty of immediate

discharge under the terms of the agreement. *Id.* The arbitrator nevertheless awarded that the grievant be reinstated. *Id.* The First Circuit recognized the discretion afforded to the arbitrator to interpret the term "dishonesty" and specifically recognized that the arbitrator's interpretation of that term was not "subject to judicial challenge." *Id.* at 945. The Court nevertheless was forced to vacate the award because once the arbitrator had interpreted the word "dishonesty" to cover the conduct in question, the contract required the arbitrator to uphold the penalty of termination. *Id.*

Likewise, in *Excel Corporation v. United Food & Commercial Workers International Union, Local 431*, 102 F.3d 1464 (8th Cir. 1996), the arbitrator interpreted the phrase "loss of seniority" in the parties' collective bargaining agreement to include termination. *Id.* at 1470. The arbitrator also concluded that this provision allowed the employer the right to terminate those employees on medical leave for over one year as a result of work-related injuries. *Id.* at 1468. The arbitrator nevertheless concluded that the employer violated the agreement by terminating certain employees after their twelve-month medical leaves of absence expired. *Id.* at 1466. The Court determined that the arbitrator's award was irreconcilable with his own interpretation of the seniority provision. *Id.* at 1470. In vacating the award, the court explicitly refused to engage in a *de novo* interpretation of the seniority provision in order to make sense of the award because the "only ambiguity found by the arbitrator in the language of the seniority provision ha[d] already been resolved by the arbitrator—i.e., that 'loss of seniority' means termination" and any other interpretation would impermissibly "*contradict the arbitrator's interpretation* of an ambiguous term" of the contract. *Id.* at 1470 (emphasis added).

In *Harry Hoffman Printing, Inc. v. Graphic Communications International Union, Local 261*, 950 F.2d 95 (2d Cir. 1991), the Second Circuit approved the vacatur of an arbitration award holding that employees honoring a picket line were entitled to notice before being permanently replaced. *Id.* at 98. The Second Circuit held that the panel's decision requiring adequate notice was based on the extra-contractual notion of "elementary due process," *id.* at 99, and therefore the award "was not 'drawn from the essence' of the CBA." *Id.* at 98 (citations omitted). In reaching this conclusion, the Court recognized that although there might have been an alternative interpretation of the agreement that would have imputed some degree of rationality to the arbitration award, the "comprehensive, detailed, arbitral opinion" foreclosed that interpretation. *Id.* at 99. Significantly, the court held that it "cannot simply ignore the arbitral opinion" in order to affirm the arbitrators' conclusion. *Id.* at 99.

Finally, in *Georgia Power Company v. International Brotherhood of Electric Workers, Local 84,* 995 F.2d 1030 (11th Cir. 1993), the arbitration panel had concluded based on its interpretation of the parties' agreement that punitive damages were not warranted under the facts of that case. *Id.* at 1032. Based solely on a thorough examination of the *arbitrators'* reasoning, the reviewing court concluded that the damages awarded were in fact punitive. *Id.* The court vacated the award, reasoning that it was prohibited from imputing an alternative rationale and because "the Arbitrators' own findings foreclose any argument that a punitive damage award was warranted in this case." *Id.*

Here, had the majority of the Third Circuit followed the approach taken by these other Circuits it would have been required to accept the *Arbitrator's* interpretation of

the Agreement instead of substituting its own *de novo* interpretation. Based on what the Arbitrator said, the court would have had no choice but to conclude that the present dispute was not arbitrable. (Pet. App. at 33-34a) (Becker, J., dissent).

The difference in the standard of review between the Circuits thus was outcome determinative in the court below. Although the "draws its essence" test should not burden the courts with the task of interpreting collective bargaining agreements, adherence to the principles embraced by the Third Circuit would require courts to do precisely that. The conflict this decision has caused in the Circuits with regard to the proper interpretation of the "draws its essence" test, particularly in light of the recurring nature of the issue and this Court's belief for the need for consistency and uniformity with respect to the law developed under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, demonstrates the need for certiorari review here.

II. THE THIRD CIRCUIT'S DECISION ENFORCING THE PORTION OF THE AWARD REQUIRING THE REINSTATEMENT OF CERTAIN UMPIRES LIKEWISE WAS A PROFOUND DEPARTURE FROM THE "DRAWS ITS ESSENCE" TEST AS APPLIED IN OTHER CIRCUITS.

The portion of the Arbitrator's award requiring that the National League reinstate certain umpires presents the quintessential example of an arbitrator that has applied his own brand of industrial justice instead of following the language of the parties' agreement. The Third Circuit's decision confirming that award was a dramatic departure from the "draws its essence" test as articulated in *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593, 597 (1960) ("[a]n arbi-

trator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. . . . When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award").

The Arbitrator's decision on its face makes clear that the sole source of the obligation that National League President Coleman apply the "merit and skill" criteria in the second paragraph of Article VIII.A was *not* the terms of the Agreement—which, according to the Arbitrator imposed no such obligation because (as the Arbitrator himself found) the umpires had resigned—but rather Coleman's decision to attempt to apply those criteria in this circumstance. (Pet. App. at 140a). Specifically, the Arbitrator stated that because the umpires had resigned (Pet. App. at 168a), "the provisions of Article VIII-A would not apply to those circumstances, and, therefore, any action taken by the League President *would not be subject to the limitations set forth in the collective bargaining agreement.*" (Pet. App. at 139a) (emphasis added). Thus, according to the Arbitrator, Coleman's decision to examine the rescinding umpires' "merit and skill" not only created an entirely *new* contractual obligation, but one that was enforceable by the union and the grievants against the Leagues through arbitration.[7] (Pet. App. at 31a).

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[7] That the Arbitrator did not base this obligation on the actual provisions of the Agreement also is evident from the Arbitrator's analysis with respect to the conduct of the American League, which is a party to the same Agreement. The Arbitrator specifically concluded (and the District Court and the Court of Appeals accepted) that the American League's "first come/first served" methodology in determining which rescissions of resignation to accept—a methodology that obviously had nothing to do with Article VIII.A or, indeed, any examination of the merit and skill of any umpire—was permissible under the terms of the Agreement. (Pet. App. at 154-55a).

The Arbitrator then traveled even further beyond the bounds of the written Agreement by adopting and applying an extra-contractual and arbitrary standard for reviewing the League President's decisions purportedly under Article VIII.A—"whether he [Coleman] was able to articulate" at the arbitration hearing his rationale. This standard is not only wholly absent from the Agreement, it is directly contrary to the broad discretion reserved to the League Presidents in Article VIII.A, which was "the parties' chosen instrument for the definitive settlement of grievances under the Agreement." *Gen. Drivers, W. & H. v. Riss & Co.*, 372 U.S. 517, 519 (1963).

The District Court below acknowledged that the Arbitrator's reasoning with respect to the reinstated National League umpires did not draw its essence from the Agreement and actually rejected the interpretation of the Agreement that formed the basis for the Arbitrator's order of reinstatement. The court nevertheless refused to vacate this aspect of the Arbitrator's award because, as flawed and irrational as the Arbitrator's reasoning was, the Arbitrator in the court's view "hit upon" the correct "conclusion." (Pet. App. at 52a).

The majority of the Third Circuit Panel determined that "the District Court erred in stating that the reasoning of the Arbitrator is entirely irrelevant." (Pet. App. at 30a). Nevertheless, the Panel refused to vacate the award and instead embraced the Arbitrator's decision to engage in "rights creation" instead of "contract interpretation." (Pet. App. at 31a). Indeed, the Court of Appeals specifically acknowledged, based on the Arbitrator's interpretation of the contract, that "because the umpires in this case resigned, none were entitled to the protections of Article VIII in the first instance regardless of the number of years of service [and] even though Article VIII was not directly applicable in this case," National

League President Coleman was required both to adhere to that Article *and* to articulate his reasoning for the decisions he reached under the terms of that Article. (Pet. App. at 31a).

The Third Circuit's decision cannot be reconciled with the "draws its essence" test as explained in *Enterprise Wheel & Car Corp.*, 363 U.S. at 597, and as followed by the overwhelming majority of the Circuits. Unlike the Third Circuit here, Courts of Appeals in the First, Second, Sixth, Seventh, Eighth and Eleventh Circuits have refused to enforce labor arbitration awards where the award is based on the creation of a new right. *See, e.g., Georgia-Pacific Corporation v. Local 27, United Paperworkers International*, 864 F.2d 940, 946 (1st Cir. 1988) (vacating award where arbitrator ignored plain language of agreement and "substitute[d] 'his own brand of industrial justice' " by requiring proper warning before discharge for acts of dishonesty where agreement provided for immediate discharge and arbitrator had already concluded that grievant committed an act of dishonesty) (citations omitted); *Harry Hoffman Printing, Inc. v. Graphic Communications International Union, Local 261*, 950, F.2d 95, 99 (2d Cir. 1991) (holding that arbitration panel "drew the basis for its decision entirely from improper, extracontractual sources" where the award requiring that notice be given to employees before replacement was expressly based on the concept of "elementary due process" rather than on terms of the agreement); *Leed Architectural Products, Inc. v. United Steelworkers of America, Local 6674*, 916 F.2d 63, 65 (2d Cir. 1990) (vacating arbitration award where the arbitrator based his decision on extra-contractual notion of "estoppel" rather than on the express terms of the parties' collective bargaining agreement, thereby impermissibly adding terms to the agreement); *Beacon Journal Publishing Company v. Akron Newspaper Guild,*

Local No. 7, 114 F.3d 596, 600-01 (6th Cir. 1997) (reversing the enforcement of arbitration award that sustained employees' grievances with respect to the scheduling of vacations where the employer had the "exclusive right" to schedule vacations and, therefore, could "not violate a specific provision of [a] collective bargaining agreement by doing something it had a right to do"; "to hold that once the Beacon Journal sets forth a vacation policy, it is bound by it, would be incongruous with the collective bargaining agreement"); *Anheuser-Busch, Inc. v. Beer Drivers, Local Union No. 744, International Brotherhood of Teamsters*, 280 F.3d 1133, 1138, 1144 (7th Cir. 2002) (holding that arbitration award "failed to 'draw its essence' from the collective bargaining agreement" because the award "exceeded the confines of interpreting and applying the contract" where the arbitrator admitted that his decision was based on the parties' past practice instead of the written contract); *Excel Corporation v. United Food & Commercial Workers International Union, Local 431*, 102 F.3d 1464 (8th Cir. 1996) (affirming order vacating award where according to the arbitrator's interpretation of the contract the seniority provision allowed the employer to terminate certain employees, but arbitrator nevertheless sustained grievances under another inapplicable provision of the agreement); *Bruno's, Inc. v. United Food & Commercial Workers International Union, Local 1657*, 858 F.2d 1529, 1532 (11th Cir. 1988) (holding that the portion of the award that writes and imposes a new operating policy on the employer in direct conflict with the express terms of the collective bargaining agreement was properly vacated where the agreement gave the employer the sole discretion to establish work rules).

The clash between the decision below and existing Supreme Court precedent as followed by a majority of

the Circuits standing alone is sufficient to warrant this Court's review. Additionally, for the reasons discussed above, this appeal involves a question of exceptional importance because it requires the Court to clarify and resolve conflicting interpretations of the standard applicable to judicial review of arbitration awards—an issue that arises each and every time a party seeks either to confirm or vacate an arbitration award.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that the Supreme Court grant a writ of certiorari, and either summarily reverse or set the case for full briefing and oral argument.

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Respectfully submitted,

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